

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ANNE P. COLONNA
(Claimant)

PRECEDENT
DISABILITY DECISION
No. P-D-68
Case No. D-70-4

S.S.A. No.

The claimant appealed from Referee's Decision No. BK-D-23489 which held that the claimant was ineligible for benefits under section 2653 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant filed a claim for disability benefits under postmark date of April 30, 1969 for a disability resulting from an operation for a hysterectomy. An award of \$2,262 was established by the Department for this disability. While drawing benefits under this award, the claimant fell and fractured her right ankle on September 22, 1969. Under date of September 4, 1969, the claimant's doctor informed the Department that the claimant would be recovered from her hysterectomy operation as of October 6, 1969, so that she could then return to her regular or customary work as an assembler at an aircraft company.

The claimant filed a claim for disability benefits under postmark date of October 30, 1969 for a disability resulting from her ankle fracture.

The award of \$2,262 was exhausted as of October 19, 1969. The claimant's physician permitted her to return to her regular or customary work on November 7, 1969, upon recovery from her ankle fracture.

It is the claimant's position that she should receive disability benefits from October 20, 1969 to and including November 6, 1969.

REASONS FOR DECISION

Section 2653 of the Unemployment Insurance Code provides in part:

"2653. The maximum amount of benefits payable to an individual during any one disability benefit period shall be 26 times his weekly benefit amount"

Section 2608 of the code provides:

"2608. 'Disability benefit period,' with respect to any individual, means the continuous period of unemployment and disability beginning with the first day with respect to which the individual files a valid claim for unemployment compensation disability benefits. For the purposes of this part, two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period."

Section 2608-1, Title 22, California Administrative Code provides:

"2608-1. Continuous Period of Unemployment and Disability. A continuous period of unemployment and disability ends:

"(a) When an individual returns to and is able to perform his regular or customary work for a period of more than fourteen (14) days or

"(b) In the case of an unemployed individual when his physician furnishes a statement giving the date, in his opinion, that the individual was able to perform his regular or customary work for a period of more than fourteen (14) days."

In the present case, the evidence establishes that the claimant had not recovered from her first disability before she received her second disabling injury. Since she suffered a continuous period of unemployment and disability from April 1969 to and including November 6, 1969, although from overlapping disabling conditions, only one "disability benefit period" is involved under the express language of the statute and regulation. Therefore, we hold that the claimant was not entitled to establish a new "disability benefit period" in connection with her second disability because she had been continuously disabled since the establishment of her first "disability benefit period." Having established but one "disability benefit period," and having exhausted her maximum award for that period, she is not entitled to further benefits for the period from October 20, 1969 to and including November 6, 1969.

DECISION

The decision of the referee is affirmed. Benefits are denied as provided in the referee's decision.

Sacramento, California, February 26, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT